**IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA**

POLLY FAYE GRIFFIN,

Petitioner,

v.

CIVIL ACTION NO. 18-C-138
Hon. David W. Hummel, Jr.

CHEVRON U.S.A, INC., ET AL.,

Respondents.

**ORDER DENYING MOTIONS FOR SUMMARY JUDGMENT OF PETITIONER POLLY FAYE GRIFFIN AND RESPONDENT CHARLOTTE WHITE AND GRANTING MOTION FOR SUMMARY JUDGMENT OF RESPONDENTS WILLIAM E. TOLAND AND AMANDA N. WHITE-TOLAND**

On January 11, 2022, this matter came on for a duly-noticed hearing on similar Motions for Summary Judgment filed by petitioner, Polly Faye Griffin, and respondent, Charlotte White, and a Motion for Summary Judgment filed by respondents William E. Toland and Amanda N. White-Toland concerning ownership of an undivided one-half interest in oil and gas minerals underlying approximately 82.3 acres of real property in Meade District, Marshall County, West Virginia. Petitioner Polly Faye Griffin appeared by counsel, Gregory A. Gaudino. Respondent Charlotte White appeared by counsel, Erik A. Schramm, Jr. Respondents William E. Toland and Amanda N. White Toland appeared by counsel, Christian E. Turak. Respondent Chevron U.S.A., Inc. appeared by counsel, Emily C. Weiss. No other parties appeared.

Currently before the Court are the following Motions for Summary Judgment: (i) Respondent Charlotte White's Motion for Summary Judgment Against Respondents William E. Toland and Amanda White-Toland; (ii) Petitioner's Motion for Summary Judgment Against Respondents William Toland and Amanda White-Toland; and (iii) Respondents William E. Toland and Amanda N. White-Toland's Motion for Summary Judgment.

After due consideration of the pleadings, written submissions, and hearing arguments of

counsel, the Court taking all exhibits submitted as true and authentic, finds that there do not exist any genuine issues of material fact. Therefore, Respondents William E. Toland and Amanda N. White-Toland's Motion for Summary Judgment is **GRANTED**, and Respondent Charlotte White's Motion for Summary Judgment Against William E. Toland and Amanda White-Toland and Petitioner's Motion for Summary Judgment Against Respondents William Toland and Amanda White-Toland are **DENIED**. The Court makes the following findings of fact and conclusions of law:

## FINDINGS OF FACT

1. Petitioner Polly Fay Griffin ("Petitioner") commenced this proceeding seeking a declaration from the Court that she and the respondents, with the exceptions of respondents Chevron U.S.A., Inc. ("Chevron") and William E. Toland and Amanda N. White-Toland (collectively, the "Tolands"), were the true and rightful owners to an undivided one-half interest in the oil and gas minerals (the "Minerals") underlying approximately 82.3 acres of real property in Meade District, Marshall County, West Virginia (the "Property"[1]).

2. Respondent Charlotte White ("White") answered the petition and asserted a counterclaim and a crossclaim seeking a declaration from the Court that she owned a one-sixth interest in the Minerals.

3. The Tolands answered the petition and asserted a counterclaim and a crossclaim seeking a declaration from the Court that they were the true and rightful owners of the Minerals.

4. Chevron answered the petition, White's crossclaim, and the Tolands' crossclaim and took no position as to the merits of the proceeding.

[1] For purposes of clarity, the "Property" refers to either the original 82.3-acre, more or less, parcel and/or the remainder 79.992-acre, more or less, parcel currently owned by the Tolands and identified by the Marshall County Assessors Office as district, tax map, and parcel numbers 9-2-9. The subject outparcel conveyances explaining these acreages are detailed in the Deed, dated January 20, 1982, by and between Timmie John McMillan and Vickie Lynn McMillan, as grantors, and Harry E. Morgan, Jr. and Virginia M. Morgan, as grantees.

5. At issue is whether Hazel L. White reserved the Minerals in that certain deed, dated June 29, 1976, whereby she conveyed the Property to Timmie John McMillan and Vickie Lynn McMillan.

6. By way of background, the Court finds that prior to November 18, 1943, all the coal, oil, and gas underlying the Property was owned by Elmer Resseger and Elsie V. Resseger.

7. By deed, dated November 18, 1943, by and between Elmer Resseger and Elsie V. Resseger, as grantors, and Fred White and Hazel L. White, as grantees (the "Resseger-White Deed"), the Ressegers conveyed the Property to the Whites with the following reservation language:

> Excepting and reserving, however, from the operation of this grant all the coal within and underlying said tract of land together with all the rights and privileges necessary and useful in the mining, removing and manufacturing of the said coal, including the right of mining the same without leaving any support for the overlying strata and without liability for any injury which may result to the surface from the breaking of said strata, the right of ventilation and drainage, and of access to the mines for men and materials: the shafts or openings for such purposes, however, to be in ravines and waste places upon said land, and not nearer than 20 rods of the principal building thereon. Also the right of mining, ventilating, draining and transporting the coal of other lands through the mines and opening in and upon the lands above described, and general freed and discharged from all servitude to the overlying land and everything therein and thereon and with the right to the grantors, their successors and assigns, to purchase at any time any number of acres of said land by paying therefor at the rate $100.00 per acre.
>
> Reserving to the land owner the right to drill and operate through said coal for oil and gas.
>
> There is also excepted and reserved the one half of the oil and gas within and underlying said tract of land together with the right to lease, drill for, operate and produce the same and such other rights as may be necessary and incidental to the production and marketing of said oil and gas.

8. Thus, after the Resseger-White Deed, the Ressegers retained all of the coal and an undivided one-half interest in the oil and gas minerals underlying the Property, and the Whites acquired an undivided one-half interest in the oil and gas minerals.

9. By Deed, dated June 29, 1976, by and between Hazel L. White, as grantor, and Timmie John McMillan and Vickie Lynn McMillan, as grantees (the "White-McMillan Deed"), Hazel White conveyed the Property to the McMillans with the following reservation language—*i.e.* the "Deed Language":

> There is further excepted and reserved from the conveyance all the coal within and underlying said tract of land together with all the rights and privileges necessary and useful in the mining, removing and manufacturing of the said coal, including the right of mining the same without leaving any support for the overlying strata and without liability for any injury which may result to the surface from the breaking of said strata, the right of ventilation and drainage, and of access to the mines for men and materials: the shafts or openings for such purposes, however, to be in ravines and waste places upon said land, and not nearer than 20 rods of the principal building thereon. Also the right of mining, ventilating, draining and transporting the coal of other lands through the mines and opening in and upon the lands above described, and general freed and discharged from all servitude to the overlying land and everything therein and thereon and with the right to the grantors, their successors and assigns, to purchase at any time any number of acres of said land by paying therefor at the rate $100.00 per acre.
>
> Reserving to the land owner the right to drill and operate through said coal for oil and gas.
>
> There is also excepted and reserved the one-half (1/2) of the oil and gas within and underlying said tract of land, together with the right to lease, drill for, operate and produce the same and such other rights as may be necessary and incidental to the production and marketing of said oil and gas.

10. Essentially, the Deed Language is used both in the Resseger-White Deed and the White-McMillan Deed.

11. Because Hazel L. White did not own the coal and never did, the coal portion of the Deed Language is of no force or effect and is a nullity.

12. By Deed, dated January 20, 1982, by and between Timmie John McMillan and Vickie Lynn McMillan, as grantors, and Harry E. Morgan, Jr. and Virginia M. Morgan, as grantees, the McMillans conveyed the Property to the Morgans. The exact same Deed Language appears in this deed.

13. By Deed, dated December 13, 1985, Virginia M. Morgan, as grantor, conveyed her interest in the Property to Harry E. Morgan, Jr., as grantee.

14. Hazel L. White died as a resident of Marshall County on August 19, 1986. The Appraisement of her Estate filed on March 8, 1987 in Book 150, Page 259 stated that she owned "1/2 Ing 82 A Bowman O & G Roy."

15. On June 13, 1991, Harry E. Morgan, Jr. died intestate. At the time of his death, he was unmarried and survived by his three children, Michael F. Morgan, Harry E. Morgan III, and Tammy L. Fritz. Accordingly, upon his death, Harry E. Morgan, Jr.'s interest in the Property became vested in his aforementioned children.

16. By Deed, dated October 23, 1991, Harry E, Morgan III, as grantor, conveyed his interest in the Property to Michael F. Morgan, as grantee.

17. By Deed, dated October 7, 1992, Tammy L. Fritz, as grantor, conveyed her interest in the Property to Michael F. Morgan, as grantee.

18. By Deed, dated November 7, 2008, Michael F. Morgan, as grantor, conveyed the Property to Raymond E. White, Cindy L. White, Amanda N. Toland, and William E. Toland, as grantees. The Deed Language appears in this deed.

19. By Deed, dated November 5, 2010, Raymond E. White and Cindy L. White, as grantors, conveyed the Property to William E. Toland and Amanda N. White-Toland, as grantees. The Deed Language appears in this deed.

20. In effect, the same Deed Language, with only minor, non-substantive differences, was made in every subsequent deed in the chain of title.

21. Petitioner, White, and the Tolands all executed oil and gas leases, pursuant to which Chevron and/or its successors or assigns have produced and continue to produce the Minerals.

22. In their motions for summary judgment, Petitioner and White argue that the White-McMillan Deed is clear and unambiguous and that Hazel L. White excepted and reserved the one-half interest in the oil and gas minerals at issue. Further, Petitioner and White contend even if the White Deed is latently ambiguous, the extrinsic evidence supports Petitioner and White's ancestor, Hazel L. White, intended to keep the White Interest in fee simple.

23. In their motion for summary judgment, the Tolands argue that the White-McMillan Deed is ambiguous, and that proper consideration of West Virginia caselaw and extrinsic evidence reveals that Hazel L. White did not except and reserve the one-half interest in the oil and gas minerals at issue.

24. In support thereof, the Tolands submitted extrinsic evidence that, and the Court hereby finds that: (i) the Minerals were subject to double, inconsistent, and contradictory tax assessments; (ii) Fred White and Hazel L. White, together or individually, executed oil and gas leases for the Minerals and for unrelated oil and gas interests that they did not own; and (iii) Fred White and Hazel L. White executed deeds containing mineral reservation language when the Whites owned no interest in said minerals.

25. Chevron took no position as to whether Hazel L. White excepted and reserved the one-half oil and gas minerals at issue.

## CONCLUSIONS OF LAW

26. "Summary judgment is appropriate where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party." Syl. Pt. 4, in part, *Painter v. Peavey*, 192 W.Va. 189, 451 S.E.2d 755 (1994).

27. A motion for summary judgment should be granted where "it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." Syl. Pt. 3, *Aetna Casualty & Surety Co. v. Federal Ins. Co. of New York*, 148 W.Va. 160, 133 S.E.2d 770 (1963).

28. "If the moving party makes a properly supported motion for summary judgment and can show by affirmative evidence that there is no genuine issue of a material fact, the burden of production shifts to the nonmoving party who must either (1) rehabilitate the evidence attacked by the moving party [or] (2) produce additional evidence showing the existence of a genuine issue for trial." Syl. Pt. 3, in part, *Williams v. Precision Coil, Inc.*, 194 W.Va. 52 459 S.E.2d 329 (1995).

29. "Deeds are subject to the principles of interpretation and construction that govern contracts generally." Syl. Pt. 2, *Faith United Methodist Church and Cemetery of Terra Alta v. Morgan*, 231 W.Va. 423, 745 S.E.2d 461 (2013).

30. "When a deed expresses the intent of the parties in clear and unambiguous language, a court will apply that language without resort to rules of interpretation or extrinsic evidence." *Gastar Exploration Inc. v. Rine*, 239 W.Va. 792, 798-799, 806 S.E.2d 448, 454-455 (2017).

31. "The term 'ambiguity' is defined as language reasonably susceptible to two different meanings or language of such doubtful meaning that reasonable minds might be uncertain or disagree as to its meaning." Syl. Pt. 5, *Gastar, supra.*

32. The White-McMillan Deed is ambiguous.

33. The White-McMillan Deed uses "except and reserve" in a confusing and inconsistent manner.

34. On the one hand, the White-McMillan Deed uses the phrase "excepting and reserving" to purport to except and reserve the coal. However, the coal was not owned by Hazel L. White, the grantor of the White-McMillan Deed, and the coal could not be excepted and reserved.

35. On the other hand, the White-McMillan Deed uses the phrase "excepted and reserved" to refer to the oil and gas interest at issue in this case.

36. The White-McMillan Deed is ambiguous in that what is meant by the phrases "excepting and reserving" and "excepted and reserved." The use of these phrases is confusing and unclear.

37. Additionally, the Resseger-White Deed contains an undisputed reservation of "*the* one half of the oil and gas." (emphasis supplied).

38. The White-McMillan Deed thereafter also refers to "the" one-half interest in the oil and gas.

39. A properly drafted exception and reservation of the second half of the oil and gas underlying the Property would have made mention of the first half that was excepted and reserved in the Resseger-White Deed.

40. Lastly, Hazel L. White could have intended to retain ownership of the second one-half interest in the oil and gas, could have intended to convey ownership of the second one-half interest in the oil and gas, or could have intended to convey only a quarter interest.

41. These facts are substantially the same as those present in *Gastar*, *supra*.

42. Accordingly, the White-McMillan Deed is ambiguous as a matter of law as to whether what, if any, interest in the Minerals was excepted and reserved.

43. "Proper parol evidence is admissible to explain a latent ambiguity in a written contract, and a latent ambiguity is one which arises not upon the words of the instrument...but upon those words when applied to the object sought to be accomplished by the contract or the subject which they describe." Syl. Pt. 10, *Paxton v. Benedum-Trees Oil Co.*, 80 W.Va. 187, 94 S.E. 472 (1917).

44. The Toland's construction of the White-McMillan Deed is the only construction that gives force and effect to the entire language at issue.

45. Because Hazel L. White never owned the coal underlying the Property, she could not have intended to except and reserve the coal by use of the phrase "excepting and reserving" in the White-McMillan Deed.

46. If "excepting and reserving" when referring to the coal had no meaning in the White-McMillan Deed, the phrase "excepted and reserved" can also have no meaning when referring to the Minerals.

47. The Tolands' position is the only harmonious construction of the White-McMillan Deed.

48. Moreover, if Hazel L. White intended to except and reserve the second half of the oil and gas, she would have referred to "the" first half already and excepted and reserved by the

Resseger-White Deed and employed new exception and reservation language to make a distinction.

49. The White-McMillan Deed indicates no such distinction.

50. While some of the parol evidence in this case supports Petitioner's and White's position, the Court holds that the great weight of said parol evidence supports the Tolands' position that Hazel L. White did not intend to except and reserve the Minerals in the White-McMillan Deed.

51. Any such parol evidence favoring Petitioner's and White's arguments is not sufficient to overcome clear West Virginia law that "[w]here an ambiguity exists in a deed, the language of such deed will be construed most strongly against the grantor." Syl. Pt. 3, *West Virginia Dep't of Highways v. Farmer*, 159 W.Va. 823, 226 S.E.2d 717 (1976).

52. "Where there is ambiguity in a deed, or where it admits of two constructions, that one will be adopted which is most favorable to the grantee." Syl. Pt. 6, *Paxton*.

53. Construing the White-McMillan Deed most strongly against Petitioner and White and most in favor of the Tolands leads to the conclusion that no oil and gas interest of any kind or nature was excepted and reserved by the White-McMillan Deed.

54. The Tolands are the true and rightful owners of an undivided one-half interest in the oil and gas minerals underlying the real property conveyed to them in that Deed, dated November 5, 2010, by and between Raymond E. White and Cindy L. White, as grantors, and William E. Toland and Amanda N. White-Toland, as grantees.

In light of the foregoing, the Court rules as follows: Petitioner's and White's motions for summary judgement are **DENIED**. The Tolands' motion for summary judgment is **GRANTED**, with the relief sought by the Tolands **GRANTED**.

Accordingly, it is hereby:

**ORDERED** that Tolands' Counterclaim and Crossclaim for Declaratory Judgment are **GRANTED**.

**ORDERED** that Petitioner's Petition is **DISMISSED** and White's Counterclaim and Crossclaim are **DISMISSED**.

**ORDERED** that Chevron provide an accounting for the amount of royalty payments due to the Tolands in conformity with this Order and the Tolands' oil and gas lease within sixty (60) days of entry of this Order.

**ORDERED** that once the Tolands and/or the Court are satisfied that Chevron's accounting is accurate, the Circuit Clerk shall disperse the duly-accounted funds and all applicable interest to the Tolands and that the remaining funds be dispersed to Chevron.

**ORDERED** that all royalties accruing after entry of this Order be paid directly to the Tolands.

This is a final appealable order pursuant to Rule 54(b) of the West Virginia Rules of Civil Procedure.

It is further **ORDERED** that the Clerk of this Court shall cause a certified copy of this Order to be served on all counsel of record.

It is further **ORDERED** that counsel for the Tolands shall transmit an attested copy of this Order to all unrepresented parties in this matter.

All exceptions and objections to the Court's findings, conclusions, and Order are hereby noted and preserved.

It is so **ORDERED**.

Entered this 23rd day of May, 2022.

Hon. David W. Hummel, Circuit Judge
Division I, 2nd Judicial Circuit

T.C.R. 24.01

**Prepared by:**

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Certified by me this 23rd day of May, 2022.
Deputy